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| **Matter of Ziegler v Assessor of the Vil. of Rockville Ctr.** |
| 2023 NY Slip Op 35320(U) |
| September 20, 2023 |
| Supreme Court, Nassau County |
| Docket Number: Index No. 616672/2022 |
| Judge: Denise L. Sher |
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**SHORT FORM ORDER**

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

TRIAL/IAS PART 29
NASSAU COUNTY

In the Matter of the Application of
CYNTHIA ZIEGLER, and all other similarly situated Petitioners on the annexed SCHEDULE A,

Petitioners,

- against -

THE ASSESSOR OF THE VILLAGE OF ROCKVILLE CENTRE AND THE BOARD OF ASSESSMENT REVIEW OF THE VILLAGE OF ROCKVILLE CENTRE,

Respondents.

Index No.: 616672/2022
Motion Seq. Nos.: 01, 02
Motion Date: 01/31/2023
03/16/2023
**XXX**

**The following papers have been read on these applications:**

| | Papers Numbered |
|---|---|
| Notice of Petition (Seq. No. 01), Verified Petition and Exhibits | **1** |
| Notice of Cross-Motion (Seq. No. 02), Affirmation and Exhibits, Memorandum of Law | **2** |
| Memorandum of Law in Opposition to Cross-Motion (Seq. No. 02) | **3** |
| Reply Memorandum of Law in Support of Cross-Motion (Seq. No. 02) | **4** |

Upon the foregoing papers, it is ordered that the applications are decided as follows:

Petitioners move, pursuant to CPLR Article 78, for an order annulling, vacating and setting aside the decision of Hearing Officer Barry Clarke, Esq. in the listed Small Claims Assessment Review ("SCAR") proceedings, and move for an order appointing new hearing officers in compliance with 22 NYCRR § 202.58(e) and remanding these matters to the new hearing officers for hearings *de novo*.

Respondents oppose petitioners' application (Seq. No. 01) and cross-move (Seq. No. 02), pursuant to CPLR §§ 3211(a)(1), (7) and (10) and 7804(f), for an order dismissing this proceeding. Petitioners oppose the cross-motion (Seq. No. 02).

In support of petitioners' application (Seq. No. 01), their counsel asserts, in pertinent part, that, "Petitioners are the owners of single-family, owner-occupied properties located within the Village of Rockville Centre in the County of Nassau and designated by the section, block and lot numbers set forth on the annexed Schedule A…. On the dates set forth on the annexed Schedule A, Petitioners, through their respective authorized representatives, appeared at a Small Claims Assessment Review ('SCAR') hearing pertaining to their respective properties' 2021/22 Village of Rockville Centre Assessments before Hearing Officer Barry Clarke, Esq., and presented arguments and evidence for a reduction in their 2021/22 final assessed values. In each of Petitioners' cases, Petitioners asserted claims of excessive and unequal assessment pursuant to RPTL §730(1). This instant Article 78 concerns solely Petitioners' claims of unequal assessment. For all Petitioners herein, the Hearing Officer issued identical determinations regarding Petitioners' claim of unequal assessment, in which the Hearing Officer denied the claim solely on the basis of the Hearing Officer's erroneous determination that the Petitioners lacked standing to impeach the Residential Assessment Ratio ('RAR') established by ORPTS [Office of Real Property Tax Services] and to bring such a claim…. In support of Petitioners' unequal assessment claim, Petitioners submitted a Ratio Study (the 'Ratio Study') based upon sales that occurred in the year prior to the taxable status date, which study supported a level of assessment for the Village of

**0.9419%** (0.009419) along with additional documents and evidence supporting Petitioners' claim of unequal assessment." *See* Petitioners' Verified Petition (Seq. No. 01) Exhibits A-C.

Counsel for petitioners argues, in pertinent part, that, "[t]he reliance of the SCAR Hearing Officer on the holding of the Appellate Division, Second Department in *Matter of Fair Assessment Committee, LLC v. New York State Office of Real Property Services*, 65 A.D.3d 1143, 885 N.Y.S.2d 125 (2nd Dep't 2009) (a case which relied upon RPTL § 1218) demonstrates a misunderstanding as to the facts of that case as well as the parameters of RPTL § 1218. RPTL § 1218 addresses the ability of a municipality, town, village, county or like assessing entity to challenge the equalization rate set by the State Board of Real Property Services ('State Board'). It has nothing to do with a SCAR hearing addressed in RPTL Article 7, other than the fact that under RPTL § 732 the RAR is one of many things that a hearing officer 'may' consider in a SCAR hearing. The rationale is quite clear. The RAR is the mechanism set by the Department of Taxation and Finance through the State Board for converting a fractional assessment on the assessment roll in order to arrive at the full equalized rate. That rate is used for many purposes including: establishing tax and debt limits; allocation of costs; determination of state assessments; determinations of ceilings (railroad and agricultural values) and exemptions; apportionment of sales tax revenue etc. Conversely, RPTL Article 7 addresses the ability of individual taxpayers to challenge their assessments, and derivatively, the fully equalized market values on a one-by-one basis on the particular locality for a particular purpose. RPTL § 1218 [Review of final determinations of state board of real property tax services relating to state equalization rates] reads in pertinent part:
A final determination of the state board of real property tax services relating to

state equalization rates may be reviewed by commencing an action in the appellate division of the supreme court in the manner provided by article seventy-eight of the civil practice law and rules upon application of the county, city, town or village for which the rate or rates were established. This process is contemplated to take place before any one of the four Appellate Divisions, and is reserved for challenges by municipalities, counties and villages. Conversely, RPTL § 732(2) [Hearing procedures], which contemplates hearings in the lower level State Supreme Court (as opposed to the Appellate Divisions) provides in pertinent part: The petitioner shall not be bound by statutory provisions or rules of practice, procedure, pleading or evidence. * * * The hearing officer shall consider the best evidence presented in each particular case. Such evidence *may include, but shall not be limited to,* the most recent equalization rate established for such assessing unit, the residential assessment ratio promulgated by the commissioner pursuant to section seven hundred thirty-eight of this title, the uniform percentage of value stated on the latest tax bill, and the assessment of comparable residential properties within the same assessing unit. *Emphasis Added.* Clearly, the RAR in a SCAR hearing is ***not*** an indispensable piece of evidence for a hearing officer. It is only one of a multitude of potential information that a hearing officer may consider. The hearing officer is not even required to consider the RAR. In essence, a collateral attack to impeach ORPTS' RAR (be it by the taxpayer or the municipality) has the sole effect of changing the measuring tool in which one evaluates the taxpayer's assessment at the particular SCAR proceeding. It has no probative or precedential value for other taxpayers or SCAR hearings. Specifically, RPTL § 735 [Determination not precedent] provides in pertinent part: The hearing officer's decision of a petition for small claims assessment review shall not constitute precedent for any purpose or proceeding involving the parties or any other person or persons . . . . Contrarily, a decision under RPTL § 1218, a challenge which must be brought in the Appellate Division, has precedential value and will affect all municipalities or school districts that used that rate. It provides in part: Whenever a final order is issued in such a proceeding directing a revised state equalization rate, any county, village or school district that used the former rate in the apportionment of taxes must, upon receipt of such final order, recalculate the levy that used such former rate and credit or debit as appropriate its constituent municipalities in its next levy. . . . The glaring difference between the two statutory provisions clearly demonstrates that while an assessment entity's challenge in the appellate division under RPTL § 1218 would result in an actual change to the RAR which would have precedential value, the determination of a SCAR hearing officer has no value other than in the case and parcel in which it was decided. It does not change the RAR or even effect the ratio adopted by the municipality other than the particular parcel. In this sense, the decision in *Matter of Fair Assessment Committee, LLC v. New York State Office of Real Property Services, supra,* was totally logical. That case did not involve a challenge at a SCAR hearing by an individual taxpayer under RPTL Article 7. Rather, it involved the kind of proceeding contemplated in RPTL § 1218 – a direct challenge seeking to have the State's RAR altered for all of Nassau County. This case – involving the review of sixty-five (65) SCAR petitions brought under RPTL Article 7, title 1-A is an entirely different creature. Clearly, the petitioner in *Matter of Fair Assessment Committee* had no standing to bring a CPLR Article 78 proceeding under RPTL § 1218. This case involves no such misapplication of the statute."

Counsel for petitioners also argues, in pertinent part, that, "[c]ontrary to the Hearing Officer's erroneous finding, RPTL §730(1) clearly affords taxpayers who occupy their single-family residence, and who have previously filed an administrative complaint, the standing to argue that their assessment is unequal or excessive. RPTL §730(1) provides: 'An owner of real property claiming to be aggrieved by an assessment on real property on the ground that such assessment is unequal or excessive may file a petition for review pursuant to this article.' The fact that the Hearing Officer did not comprehend the fundamental, statutory basis of standing granted by RPTL §730(1) warrants the vacating of all the SCAR decisions herein and a remand of these cases to new, randomly-assigned hearing officers for hearings *de novo*. Were the Hearing Officer correct in his position concerning standing, a SCAR hearing would be of no use to any homeowner who had a claim of unequal assessment, and such a homeowner seeking to challenge the 'assessor's determination' would be regulated to an expensive, complicated Article 7, Title 1- tax certiorari proceeding (i.e., the type of proceeding owners of commercial property are required to bring). This is anathema to the laws pertaining to SCAR hearings which were designed to afford a wrongfully assessed homeowner a speedy and inexpensive way to obtain relief. [citation omitted]. Notwithstanding all the foregoing, the Hearing Officer's decisions violate RPTL § 730(1) which clearly allows an owner of real property to file a SCAR petition for review of the property's tax assessment 'on the ground that such assessment is unequal.' … [B]y denying the Petitioners the right to provide their own evidence of a ratio study the Hearing Officer denied them the right to challenge their assessment under RPTL § 706. Consequently, his decision was arbitrary and capricious and based on an error of law. The parties to a SCAR proceeding must have the right to impeach the ORPTS' RAR and denying them such right is on its face arbitrary and capricious as it denies them the right to challenge their assessment under RPTL § 732(2). The Ratio Study was performed in accordance with New York State Law and specifically RPTL §720(3)(b)(2), using actual sales from the year immediately prior to the taxable status date in accordance with the leading appellate decision of *Matter of Markus v. Assessors of Town of Taghkanic*, 24 A.D.3d 1066, 806 N.Y.S.2d 295 (3d Dep't 2005). Petitioners' Ratio Study without a doubt was more than sufficient to satisfy Petitioners' minimal burden of proof to overcome any presumption that the level of assessment utilized by the Village was not accurate. In order to meet the minimal burden of proof to dispel the presumption of validity on the issue of unequal assessment, all that is needed is to provide substantial evidence. 'The substantial evidence standard is a minimal standard. It requires less than 'clear and convincing evidence' [citation omitted] and less than proof by a 'preponderance of the evidence, overwhelming evidence or evidence beyond a reasonable doubt.'' [citation omitted]. 'In the context of tax assessment cases, the 'substantial evidence' standard merely requires that petitioner demonstrate the existence of a valid and credible dispute regarding valuation. The ultimate strength, credibility or persuasiveness of petitioner's arguments are not germane during this threshold inquiry.' [citation omitted]. In fact, the Ratio Study not only met Petitioners' minimal burden of proof within the context of the underlying SCAR hearings, it was sufficient to meet the higher standard of evidentiary proof to support a claim of unequal assessment in the more formal Article 7, Title-1 proceedings under RPTL §720(3)(b)(2).... The Courts have long-accepted ratio studies based upon actual sales as evidence of unequal assessment.... After Petitioners clearly met their minimal burden of proof, the Hearing Officer was required to weigh the evidence regarding Petitioners' claim of unequal assessment, and make a determination based upon the *preponderance* of the evidence [citations omitted]. The Hearing Officer clearly did not do so, despite the fact that the Village did not submit any ratio study concerning the appropriate level of assessment. In addition to each Petitioners' claim of unequal assessment, Petitioners' also made a claim of excessive assessment. Petitioners each submitted a comparable market analysis ('CMA') in support of such claim and in conjunction with their claim of unequal assessment ..., although as noted above, this matter only involves the Hearing Officer's determination of Petitioners' claim of unequal assessment. Petitioners respectfully ask the Court to provide the substantial justice which was denied in the underlying Small Claims Assessment Review proceedings, and grant the instant application by vacating the decisions of the Hearing Officer, and setting these matters down for hearings *de novo* before new hearing officers. Petitioners all share a common question of law and/or fact and these matters all involve the same Hearing Officer and identically-worded arbitrary and capricious decisions concerning Petitioners' standing and alleged failure to meet their minimal burden of proof. Accordingly, the joinder of all petitioners in this instant Article 78 proceeding is proper." *See* Petitioners' Verified Petition (Seq. No. 01) Exhibit F.

In opposition to the Verified Petition (Seq. No. 01) and in support of the cross-motion (Seq. No. 02), counsel for respondents submits, in pertinent part, that, "[i]nitially, the Petition should be dismissed due to Petitioners' failure to commence this Article 78 proceeding 'against the same parties named in the small claims petition,' as mandated by RPTL § 736(2). Specifically, the underlying small claims petitions were brought against the 'Village of Rockville Centre,' whereas the instant proceeding names 'The Assessor of the Village of Rockville Centre' and 'The Board of Assessment Review of the Village of Rockville Centre' as Respondents. Inasmuch as the Village of Rockville Centre is a necessary party, this proceeding should be dismissed based on Petitioners' failure to commence this proceeding against the correct entity. Contrary to Petitioners' zealous arguments, the Court's role in reviewing a decision issued by a Hearing Officer following a Small Claims

Assessment Review ('SCAR') proceeding 'is limited to ascertaining whether that determination has a rational basis, that is, whether it is not affected by an error of law or not arbitrary and capricious.' [citation omitted]. Here, the underlying SCAR decisions by Hearing Officer Barry Clarke ('H.O. Clarke') had a rational basis and were neither arbitrary nor capricious. In fact, H.O. Clarke's decisions indicated not one, but two grounds, which independently formed the basis for his denial of Petitioners' challenge to the use of the Residential Assessment Ratio ('RAR') of 1.17 set by the Office of Real Property Tax Services ('ORPTS').... First, the Hearing Officer rationally concluded on the basis of undisturbed Second Department precedent that Petitioners lacked standing to challenge the ORPTS RAR. Second, independent of the issue of standing, the Hearing Officer rationally concluded upon the evidence presented that Petitioners did not meet their burden of establishing claims of unequal assessment.... It was not arbitrary or capricious for the Hearing Officer to conclude that Petitioners lacked standing to challenge the RAR given that numerous courts, including the Second Department, have repeatedly confirmed that principle. Furthermore, it was not arbitrary or capricious for the Hearing Officer to deny Petitioners' unequal assessment challenges utilizing the RAR promulgated by ORPTS given that RPTL § 732, the statute governing the conduct of SCAR hearings, vests Hearing Officers with authority to 'consider the best evidence presented in each particular case' and specifically references the ORPTS' RAR. [citation omitted]. Moreover, Respondents' underlying submissions to the Hearing Officer, conspicuously omitted from the Petition, confirm that the Village presented evidence of the ORPTS' RAR of 1.17, which the Hearing Officer, in his discretion, rationally utilized in his determinations of Petitioners' unequal assessment challenges. Contrary to Petitioners' insinuation, the purpose of Article 78 review is not to give Petitioners' an opportunity to re-do administrative hearings based on their subjective dissatisfaction with the results. Instead, the Court's role is limited to reviewing the evidentiary record that was before the SCAR Hearing Officer and if, as here, the decisions were rationally based on the record, there is no basis but to confirm the Hearing Officer's determinations. The Petition should be dismissed, pursuant to CPLR §7804(f), for failure to state a cause of action pursuant to CPLR §3211(a)(7), a defense founded upon documentary evidence pursuant to CPLR §3211(a)(1) and failure to name a necessary party pursuant to CPLR § 3211(a)(10)." *See* Petitioners' Verified Petition (Seq. No. 01) Exhibit B.

Counsel for respondents contends, in pertinent part, that, "[t]axpayers, upon their election to file a SCAR petition, waive their right to commence a tax certiorari proceeding under RPTL Article 7, Title 1. [citation omitted]. Pursuant to RPTL § 736(2), the sole remedy of a taxpayer seeking judicial review of the decision of a SCAR hearing officer is to commence an Article 78 proceeding, 'provided that such review shall be maintained against the same parties named in the small claims petition.' [citation omitted]. Furthermore, 'a court may not adjudicate a dispute raised in a CPLR article (*sic*) 78 proceeding unless the governmental agency which performed the challenged action is a party thereto.' [citations omitted]. In the underlying SCAR petitions, Petitioners appropriately named the Village of Rockville Centre, as the assessing unit.... However, Petitioners commenced the instant Article 78 proceeding against 'The Assessor of the Village of Rockville Centre' and 'The Board of Assessment Review of the Village of Rockville Centre,' yet, notably, did not name the Village of Rockville Centre, which is a necessary party to this proceeding pursuant to RPTL § 736(2).... In light of Petitioners' failure to name a necessary party and violation of RPTL § 736(2), the Petition should be dismissed." *See* Respondents' Affirmation in Support of Cross-Motion (Seq. No. 02) Exhibit A; Petitioners' Verified Petition.

Counsel for respondents further argues, in pertinent part, that, "[i]t is well settled that an Article 78 proceeding is fatally defective where the petition is made by an attorney rather than the aggrieved party, unless the attorney demonstrates personal knowledge of the facts. [citation omitted]…. Here, Petitioners improperly rely solely upon a Petition verified by an attorney, Arielle Carla, Esq., rather than any of the aggrieved parties or anyone with personal knowledge of the underlying proceedings…. While the 'Verification' attached to the Petition indicates that 'all the material allegations of the Petition are within [the attorney's] personal knowledge,' neither the Petition, nor any of the documents accompanying it, set forth a basis for the attorney's personal knowledge of the facts, including the arguments and evidence presented at the underlying SCAR proceedings…. In fact, attorney Carla does not state that she, or even her firm, represented Petitioners at the underlying SCAR proceedings; in fact, attorney Carla vaguely states that Petitioners, 'through their respective authorized representatives, appeared at a [SCAR] hearing…' … Furthermore, the Petition is not otherwise accompanied by an affidavit from any individual with personal knowledge. In the absence of a Petition or affidavit by anyone with personal knowledge of the facts, the Petition and allegations set forth therein fail to rise above the level of speculative and conclusory. Therefore, the Petition should be dismissed for failure to state a cause of action. [citations omitted]. By contrast, Respondents' motion to dismiss is supported by the accompanying Affirmation of Michael B. Weiss (the 'Weiss Aff.'), who has personal knowledge of the facts pertinent to this proceeding by virtue of the fact that he appeared at the subject SCAR hearings as the Village's authorized representative and personally transmitted the Village's evidence to the assigned Hearing Officer." *See* Petitioners' Verified Petitioner; Petitioners' Affirmation in Support of Motion (Seq. No. 01).

Counsel for respondents further argue, in pertinent part, that, "[h]ere, the SCAR hearing officer considered the submissions from the both the Petitioners and Respondents with respect to the claims of unequal assessment and acted within his authority by denying those challenges and utilizing the RAR of 1.17 as promulgated by ORPTS.... RPTL § 732(2) directs a SCAR hearing officer to consider the 'best evidence presented in each particular case,' specifically including, but not limited to, '*the residential assessment ratio promulgated by the commissioner pursuant to section [738] of [the RPTL].*" (emphasis added). ORPTS is an independent, impartial state agency that determines the RAR pursuant to its statutory authority under RPTL § 738. Indeed, it has been held that the RAR issued by ORPTS is entitled to presumptive weight in SCAR proceedings in light of the agency's 'considerable administrative expertise' and unique qualifications to make the proper ratio determination. [citations omitted]. Respondents' submissions to the SCAR Hearing Officer unequivocally confirm that the Hearing Officer's decision to utilize the ORPTS' RAR of 1.17 was rationally based on the evidence presented. True and correct copies of Respondents' submissions, which were conspicuously absent from the documents annexed to the Petition herein, are annexed as exhibits to the accompanying Weiss Aff. Petitioners, by failing to include the complete record, inclusive of Respondents' submissions, give this Court the misleading and erroneous impression that the Hearing Officer's decision to utilize the ORPTS' RAR was rendered arbitrarily.... This was not the case. Specifically, Respondents submitted, *inter alia*, briefs entitled 'Response to RAR Challenge' and 'Response to Maidenbaum Brief,' supporting the use of the ORPTS' RAR of 1.17 and pointing out the numerous deficiencies in the evidence that Petitioners relied on in support of their RAR challenge.... The Hearing Officer acted within his express authority under RPTL § 732(2) in finding that the ORPTS' RAR was the correct assessment ratio to utilize in regard to Petitioners' unequal assessment challenges. Given that the hearing officer acted within his statutory authority in applying the ORPTS' RAR, which resulted in a denial of the unequal assessment challenges, it cannot be said that the decisions lacked a rational basis. Petitioners' statement that the Hearing Officer 'den[ied] the Petitioners the right to provide their own evidence of a ratio study,' is, at best, an error of omission and, at worst, a deliberate attempt to mislead the Court.... Initially, there is no evidence that the hearing officer excluded or otherwise declined to consider any of Petitioners' underlying submissions. In fact, H.O. Clarke expressly states in his decisions that he considered, among other evidence submitted by Petitioners, '1) Rockville Center (sic) Ratio Analysis; 2) Opinion of Counsel SBEA, Volume 7; ... 5) Foil Request e-mail and response from ORPTS dated 3/28/22; 6) ORPTS Appellate Brief-App. Div. Index No. 2007-09430; 7) ORPTS County Roll RAR; 8) ORPTS Method Issues,' as part of his review and deemed the evidence 'detailed and extensive,' yet not sufficient to sustain Petitioners' burden.... Given that it is evident from the decisions, themselves, that the Hearing Officer *did* consider Petitioners' submissions, including the Ratio Study, Petitioners' assertions to the contrary are speculative, unsupported and negated by documentary evidence. Petitioners incorrectly conflate the Hearing Officer's denial of their challenge to the use of the ORPTS RAR with a categorical denial of Petitioners' ability to present an unequal assessment challenge. Contrary to Petitioners' argument, RPTL § 730(1) does not confer standing upon a SCAR petitioner to challenge the RAR; rather RPTL § 730(1) simply directs the courts to establish a SCAR program under which an 'owner of real property claiming to be aggrieved by an assessment on real property on the ground that such assessment is unequal or excessive may file a petition for review pursuant to this article...' RPTL § 729 defines 'Unequal assessment,' in relevant part, as follows: (a) an entry on an assessment roll of the assessed valuation of real property improved by a one, two or three family residential structure which is made at a higher proportion of full value than assessed valuation of other residential real property on the same roll… Contrary to Petitioners' argument, there is nothing in RPTL § 730(1) or elsewhere in Article 7, Title 1-a of the RPTL that inextricably links a SCAR petitioner's right to challenge his or her assessment as unequal with the 'right' to challenge the RAR set by ORPTS. [citation omitted]. It is perhaps for that reason that Petitioners attempt to support this baseless argument with references to a number of statutes that apply to tax certiorari proceedings under RPTL Art. 7, Title 1, including RPTL §§ 720(3)(b) and 706, rather than Art. 7, Title 1-a, which specifically applies to a 'Special Proceeding for Small Claims Assessment Review.' … Here, the hearing officer rationally concluded on the basis of the evidence presented that Petitioners failed to sustain their burden of demonstrating that their respective assessments were unequal. The documentary evidence unequivocally establishes that H.O. Clarke did consider the evidence that Petitioners' presented in support of an unequal assessment challenge and did so under the standard articulated in RPTL § 729 (4)…. [citation omitted]. Therefore, there is no basis to disturb those decisions. [citations omitted]." *See* Respondents' Affirmation in Support of Cross-Motion (Seq. No. 02) Exhibits B-D; Petitioners' Verified Petition; Petitioners' Verified Petition Exhibits B and C.

In opposition to respondents' cross-motion (Seq. No. 02), counsel for petitioners asserts, in pertinent part, that, "Respondents have raised two issues with respect to the verification of the Petition. Specifically, they argue that an affidavit of a person with personal knowledge of the underlying facts is necessary, and that the verification made by the attorney for Petitioners is deficient. They are incorrect for at least two reasons: (a) the issues presented in the Petition are legal only -- not factual and (b) Respondents failed to abide by the procedures set forth in

CPLR Rule 3022.... Rather, CPLR § 3020(d) provides in pertinent part that 'if all the material allegations of the pleading are within the personal knowledge of an agent or the attorney, the verification may be made by such agent or attorney.' It has long been held that an attorney personally knowing all material allegations of a pleading, may verify it. [citations omitted].... There is no dispute that the SCAR Hearing Officer based his entire determination on the now reversed decision by the Honorable Leonard D. Steinman, J.S.C., in *Costigan v. Assessor of Garden City*, Index No. 610725/2020 dated September 27, 2021 (*Costigan I*).... There is no dispute or question of fact as to what the Hearing Officer's SCAR decisions state. They are crystal clear. They are also wrong. As mentioned in the Petition, the Court granted reargument in *Costigan*, and upon reargument reversed itself, finding that Petitioners at SCAR hearings have an absolute right to impeach the RAR. By decision and order dated and entered September 29, 2022, the Honorable Leonard D. Steinman, J.S.C., granted reargument of his prior order, thereafter granted the Article 78 petition and remanded each of the twenty-eight petitions for new hearings. *Costigan v. Assessor of Garden City*, Index No. 610725/2020, dated September 29, 2022 (*Costigan II*).... This is not a factual issue. There is no dispute here as to what the SCAR hearing decisions state.... CPLR Rule 3022 [Remedy for defective verification] addresses itself to a 'defective verification.' It provides: A defectively verified pleading shall be treated as an unverified pleading. Where a pleading is served without a sufficient verification in a case where the adverse party is entitled to a verified pleading, he may treat it as a nullity, ***provided he gives notice with due diligence to the attorney of the adverse party that he elects so to do***. Emphasis Added. The verified petition in this case ... was served on Respondents on December 9, 2022.... Respondents did not advise Petitioners' attorney that they were treating the verification as a nullity – they still have not – but, instead, filed a notice of appearance.... In fact, no argument was made with respect to the verification until Respondents filed their cross-motion on March 7, 2023 ... – eighty-eight (88) days after it was served upon Respondents.... Clearly, under the circumstances here, the verification by Petitioners' attorney is appropriate inasmuch as the issues presented in the Petition are legal, not factual. Moreover, even if Respondents were otherwise correct (they are not), Respondents waived any such defect by failing to act with due diligence to advise Petitioners' counsel that they chose to treat the verification as a nullity." *See* Petitioners' Verified Petition; NYSCEF Document Nos. 11, 12 and 14.

Counsel for petitioners further contends, in pertinent part, that, "Respondents claim that the decisions of the SCAR Hearing Officer were rationally based, because:
(a) the Hearing Officer's decisions were based on the best evidence presented and
(b) notwithstanding Justice Steinman's reversal of his earlier decision and order in *Costigan II*, the earlier *Costigan I* decision was correct. What Respondents fail to grasp is that once the Hearing Officer incorrectly determined that Petitioners lacked standing to impeach the RAR, no consideration of any evidence, no matter how compelling it otherwise might be, could form the basis of a rationally based decision, nor could it be best evidence. This would be tantamount to a judge looking at a grand jury transcript and indictment, and determining there was sufficient evidence to convict, without giving the defendant an opportunity to challenge the prosecution's case.... Respondents argue that the SCAR Hearing Officer listened to the testimony concerning the impeachment of the RAR. However, once the Hearing Officer determined that he could not consider Petitioners' evidence challenging the RAR it does not matter that there was other evidence that would otherwise have formed a basis of a 'best evidence' argument. Once the Hearing Officer refused consideration of

Petitioners' evidence challenging the RAR, his decision became unsustainable. Respondents' counsel claims that the Hearing Officer's determinations are valid because he relied upon the decision and order in *Costigan I* (*Costigan v. Assessor of the Village of Garden City, et. ano.*, Index No. 610725/2020 (September 27, 2021) and therefore had a rational basis in doing so. In fact, the Hearing Officer specifically stated in each and every one of his decisions: Based on my review of all the evidence and testimony presented, I find that Justice Steinman's decision [in *Costigan I*] is the best evidence. Therefore the challenge to the RAR is denied. This is an absurd argument. Justice Steinman did not grant reargument because of a change in the law. As stated in his decision granting reargument, the law was always in line with Petitioners' position. The law did not suddenly change. Rather, Justice Steinman explicitly stated that his interpretation of the law was incorrect…. The Hearing Officer incorrectly relied on Justice Steinman's admittedly flawed decision. As such, the decision on its face is unsustainable."

Counsel for petitioners adds, in pertinent part, that, "[f]inally, Respondents raise, almost as a *throw away*, the claim that the Petition is defective because it is not against the correct party, i.e., the 'Village of Rockville Centre.' Aside from the fact that both entities are political subdivisions of the Village of Rockville Centre, the argument lacks any merit and is utterly absurd. First, to quote the Brandon Flowers song, this is 'the way it's always been.' Respondents themselves cite multiple cases at the appellate level involving underlying Article 78 challenges to SCAR proceedings, where the named entities are all the assessors or the board of assessment review. [citations omitted]. Moreover, RPTL § 730(7) provides: Commencement of a proceeding under this article shall not stay the proceedings of the *assessors or other persons against whom the proceeding is maintained* or to whom the assessment is delivered, to be acted upon according to law. Emphasis Added. The plain implication is that the assessor, in this case the Assessor of the Village of Rockville Centre, is a party to the proceeding. The statute clearly implies, if not outright states, that the SCAR proceeding is maintained against the assessors or 'other persons'… NOT the municipality. Second, if the above was not clear enough, RPTL § 730(8) provides: The petitioner shall mail a copy of the petition within ten days from the date of filing with the clerk of the supreme court to: (a) the clerk of the assessing unit named in the petition, or if there be no such clerk, then to the officer who performs the customary duties of that official, or to the president of the tax commission in a city with a population of more than one million and having a tax commission; (b) ***the assessor or chairman of the board of assessors of the assessing unit named in the petition***…. * * * ***Neither the school district, county nor such village shall be deemed to have been made a party to the proceeding***. Emphasis Added. Thus, from a statutory standpoint the correct parties in this Article 78 proceeding are the Assessor of the Village of Rockville Centre and the Board of Assessment Review of the Village of Rockville Centre -- not the Village of Rockville Centre. In fact, the very last sentence of RPTL § 730(8), which *inter alia*, precludes Petitioners from directly naming the Village of Great Neck Estates (*sic*), demonstrates the paucity of Respondents' argument here. Tellingly, Respondents have settled similar, RPTL Article 7, Title-1 petitions with taxpayers even when the caption of such Petitions named the Assessor/Board of Assessment review (*sic*) without separately listing the municipality as a respondent. Furthermore, Respondents' counsel itself recently settled such RPTL Petitions in which the municipality was not listed as a separate Respondent. Respondents (*sic*) counsel's arguments are not only without merit, they are the height of hypocrisy."

With respect to counsel for respondents' argument that that the Verified Petition failed to name a necessary party, petitioners did not seek any relief from the Village of Rockville Centre and only commenced the SCAR proceeding against The Assessor of the Village of Rockville Centre and The Board of Assessment Review of the Village of Rockville Centre. *See* RPTL § 736(2). No evidence was submitted to establish that the Village of Rockville Centre's interest would be affected by the outcome of this proceeding requiring dismissal for failing to name it as a party. *See Greenfield v. Town of Babylon Dept. of Assessment*, 76 A.D.3d 1071, 908 N.Y.S.2d 251 (2d Dept. 2010).

When a judicial hearing officer's determination in a Small Claims Assessment Review (SCAR) proceeding for reduction of real property taxes are contested, the court's role is limited to ascertaining whether said determination has a rational basis. *See* McKinney's RPTL § 732(2); *Yee v. Town of Orangetown*, 76 A.D.3d 104, 904 N.Y.S.2d 88 (2d Dept. 2010); *Sass v. Town of Brookhaven*, 73 A.D.3d 785, 900 N.Y.S.2d 383 (2d Dept. 2010); *Meirowitz v. Board of Assessors*, 53 A.D.3d 549, 861 N.Y.S.2d 414 (2d Dept. 2008); *Lauer v. Board of Assessors*, 51 A.D.3d 926, 857 N.Y.S.2d 724 (2d Dept. 2008); *Greenfield v. Town of Babylon Department of Assessment, supra.*

Furthermore, "[t]he [RPTL] provides that hearings held pursuant to the [SCAR] procedure are to be conducted on an informal basis, and the hearing officer is vested with the discretion to consider a wide variety of sources and information,..." *Meirowitz v. Board of Assessors, supra* at 550.

SCAR hearing officers have an obligation to set forth the basis of their decision so that said decision may be reviewed by a court of law if an application is made to determine whether the subject decision was arbitrary and capricious. *See Matter of Leone v. Board of Assessors*, 100 A.D.3d 635, 953 N.Y.S.2d 157 (2d Dept. 2012).

In the sixty-five (65) decisions rendered by SCAR Hearing Officer Barry Clarke, Esq, that are the subject of petitioners' application (Seq. No. 01) before this Court, Hearing Officer Clarke held, in pertinent part, that, "Petitioners challenge to the RAR was supported by submission of evidence that included the following: 1) Rockville Center (sic) Ratio Analysis; 2) Opinion of Counsel SBEA Volume 7. 3) Nassau County case- Donus v. Board of Assessors of Nassau County, Index No. 14088/2006; 4) An Appellate Division case, Matter of Markus v. Assessors of Town of Taghkanic decided 2005; 5) Foil Request e-mail and response from ORPTS dated 3/28/22. 6) ORPTS Appellate Brief-App. Div. Index No.2007-09430. 7) ORPTS County Roll RAR. 8) ORPTS Method issues. Petitioner testified that the RAR of 1.17 was incorrect, and the proper assessment should be based on a RAR of 0.00974. Respondent in response to the extensive evidence presented by petitioner, testified and submitted the following evidence: 1) Memorandums regarding ratios; 2) Relevant case law[;] 3) a Nassau County Supreme Court decision entered March 10, 2022, concurring with the determination of Justice Leonard Steinman in the Matter of the Application of Costigan. et. al. vs. the Assessor of the Village of Garden City and the Board of Assessment Review of the Village of Garden City, County of Nassau, index number 610725/2020 dated September 27, 2021. Though Petitioner makes a detailed and extensive argument in challenging the RAR, the argument centers on whether petitioner can challenge the RAR at a SCAR hearing. Thus, the decision before me at this hearing is whether to utilize the Village's RAR or

Petitioner's proposed RAR. Respondent's evidence of Justice Steinman's decision address (*sic*) that specific issue. In that case, Petitioner sought to set aside a decision of a Hearing Officer in a SCARP (*sic*) based on the Hearing Officer's finding that the Petitioner lacked standing to challenge the RAR set by ORPTS. Justice Steinman's decision states in part ... 'Class ratios are 'species or subsets' of state equalization rates, so therefore covered by RPTL section 1218, Matter of Fair Market Assessment Comm., LLC v. New York State Office of Real Property Services 65 A.D. 3d 1143 (2d Dept. 2009). A taxpayer does not have standing to challenge an equalization rate (or class ratio) See RPTL Section 1212; Id[.] at 1144. Based on my review of all the evidence and testimony presented, ***I find that Justice Steinman's decision is the best evidence. Therefore, the challenge to the RAR is denied.*** (emphasis added)" *See* Petitioners' Verified Petition (Seq. No. 01) Exhibit B.

The Court takes judicial notice that instant matter before it is almost identical to the Nassau County Supreme Court matter that was before the Honorable R. Bruce Cozzens, J.S.C., *In the Matter of the Application of Stanislao Pugliese & Jennifer Romanello, and all other similarly situated Petitioners on the annexed SCHEDULE A, v. The Assessor of the Village of Rockville Centre and The Board of Assessment Review of The Village of Rockville Centre*, Index No. 611428/2021 (hereinafter "the Cozzens Matter"). In the Cozzens Matter, petitioners had requested the same relief as is requested in the instant matter. *See* Cozzens Matter NYSCEF Document No. 01. Justice Cozzens had initially denied petitioners' application. *See* Cozzens Matter NYSCEF Document No. 10. However, based upon petitioners' motion to renew the court's prior decision (*see* Cozzens Matter NYSCEF Document No. 16), Justice Cozzens granted renewal and "reverse[d] its prior ruling as mistaken." *See* Cozzens Matter NYSCEF Document No. 25. Justice Cozzens held, in pertinent part, that, "[p]etitioners file Motion Sequence 2 seeking an order pursuant to CPLR Rule 2221(e) granting renewal of this Court's prior decision and order (one paper) dated March 3, 2020 and entered on March 10, 2022, which relied upon the prior ruling of the Supreme Court, Nassau County in [the] ***Matter of Costigan v. The Assessor of the Village of Garden City*, Index No. 610725/2020**, entered on September 30, 2021, on the basis that by decision and order (one paper) dated and entered September 29, 2022, the Court granted reargument of said decision, and upon reargument reversed its prior ruling as 'mistaken', and thereafter granted the Article 78 petition and remanded the matters for new hearings…. The Honorable Leonard D. Steinman of this Court, in the case of ***Matter of Costigan v. The Assessor of the Village of Garden City*, Index No. 610725/2020 Steinman J.** granted the petitioners' application to reargue and upon reargument granted the petition and remanded the matters for new hearings. This Court had previously relied on the (*sic*) Justice Steinman's original decision in making its order in this case on Motion Sequence 1. This Court has reviewed the decision of Justice Steinman on reargument dated September 29, 2022 and concurs with the determination of the Honorable Leonard D. Steinman. The arguments and the facts (other than the fact that each concerned a different Village) are on point with this case. In considering this motion the Court is well aware the purpose of establishing Small Claims Assessment Review Proceedings was to enable homeowners to challenge their assessments on an informal basis which would permit finalization for the homeowners long before the formal requisites of Article 7 of the Real Property Tax Law would be finalized…. As Justice Steinman stated 'This conclusion is buttressed by the Second Department's decision in *Leone v. Board of Assessors*, 100 A.D.3d 635 (2'd Dept. 2012) in which the court directed the trial court to consider on its merits petitioners' challenge to a hearing officer's determination that they (*sic*) could not challenge an RAR and introduce evidence as to the proper ratio." ... [T]his Court specifically relied upon Justice Steinman's decision when issuing its initial decision herein. Although this Court is not bound to concur with a decision of a court of equal jurisdiction, upon review of the facts and law in that case and the case at bar, this Court finds the facts and the analysis of the law in the ***Costigan*** case to be relevant and on point with this case. The Court finds that the fact that petitioner's (*sic*) motion is based upon the Court's initial misapprehension of the law does not preclude this Court from granting the petitioner's (*sic*) motion and issuing a new decision herein.... The respondents argue that Justice Steinman's original decision should be followed. Justice Steinman ultimately ruled that a homeowner actually has standing to challenge the RAR at SCAR. Respondents are advocating that this Court should continue to rely upon a decision that was ultimately reversed. The Court finds that argument to be without merit." *See id.*

While this Court agrees the holding in the above detailed Decision in the Cozzens Matter that it "is not bound to concur with a decision of a court of equal jurisdiction," this Court does, however, find, as Justice Cozzens found, that "upon review of the facts and law in that case and the case at bar, ... the facts and the analysis of the law in the ***Costigan*** case [are] relevant and on point with this case." *See id.* This Court also finds the aforementioned decision in the Cozzens Matter is directly on point with the matter currently before this Court, especially given the fact that the respondents are the same – The Assessor of the Village of Rockville Centre and The Board of Assessment Review of The Village of Rockville Centre – and that the relief sought is identical. *See id.* This Court, therefore, finds that the sixty-five (65) decisions rendered by SCAR Hearing Officer Barry Clarke, Esq, that are the subject of petitioners' application (Seq. No. 01) do not have a rational basis.

Accordingly, petitioners' application (Seq. No. 01), pursuant to CPLR Article 78, for an order annulling, vacating and setting aside the decision of Hearing Officer Barry Clarke, Esq. in the listed Small Claims Assessment Review ("SCAR") proceedings, and for an order appointing new hearing officers in compliance with 22 NYCRR § 202.58(e) and remanding these matters to the new hearing officers for hearings *de novo*, is hereby **GRANTED**.

Respondents' cross-motion (Seq. No. 02), pursuant to CPLR §§ 3211(a)(1), (7) and (10) and 7804(f), for an order dismissing this proceeding, is hereby **DENIED**.

This constitutes the Decision and Order of this Court.

**ENTER:**

**DENISE L. SHER, A.J.S.C.**
**XXX**

Dated: Mineola, New York
September 20, 2023

**ENTERED**
**Sep 22 2023**
NASSAU COUNTY
COUNTY CLERK'S OFFICE